FILE COPY

Office Supreme Court, U.
FILED
SEP 19 1930
CHARLES ELMORE CROP
CLERK

No. 823

In the Supreme Court of the United States

OCTOBER TERM, 1930

SECOND NATIONAL BANK OF SAGINAW, SAGINAW, MICHIGAN, TRUSTEE OF THE ESTATE OF WELLINGTON R. BURT, DECEASED, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 323

SECOND NATIONAL BANK OF SAGINAW, SAGINAW, Michigan, trustee of the estate of Wellington R. Burt, deceased, petitioner

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition in this case.

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875 (R. 3), should be construed to deprive the petitioner of the right which it otherwise would have had to recover taxes which had been collected after the statutory period of limitations had expired, and if so construed, whether it is in violation of the Fifth Amendment.

This question is the same as that involved in *Graham and Foster, Co-partners, etc.* v. *Goodcell, Collector*, No. 36, October Term, 1930, certiorari granted March 3, 1930; *Percival E. Magee* v. *United States,* No. 65, October Term, 1930, certiorari granted May 19, 1930; *Oak Worsted Mills* v. *United States,* No. 104, October Term, 1930, certiorari granted June 2, 1930; and *Taft Woolen Company* v. *United States,* No. 105, October Term, 1930, certiorari granted June 2, 1930, cases which are now before this Court. The facts are substantially the same in the instant case as in those cases. In three of those cases, suit was brought before the passage of the Act of 1928, but the instant case and the *Magee case* were brought after its passage.

The pertinent dates in the instant case are as follows (R. 11, 12, 13):

April 1, 1918, return for 1917 filed.

January, 1921, additional assessment made.

February 17, 1921, claim in abatement filed.

November 23, 1922, part payment made by credit of overpayment of taxes for 1920.

April 1, 1923, expiration of five year period for assessment and collection of tax.

May 24, 1923, claim in abatement rejected.

October 12, 1923, tax collected.

July 11, 1927, claim for refund filed.

September 1, 1928, claim for refund rejected.

February 4, 1929, suit brought.

The Court of Claims held that Section 611 of the Revenue Act of 1928 barred recovery. (R. 13.)

Since the same question is already before this Court in several pending cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
LISLE A. SMITH,
BRADLEY B. GILMAN,
ERWIN N. GRISWOLD,
Attorneys.

SEPTEMBER, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930